



Real Estate Transfer News

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1. Q. A vendor paid the transfer fee on an original land contract when it was recorded. How should the return be filled out when the deed in satisfaction is recorded?

A. Type of transfer (line 18) and Transfer Fee Due (line 26) should be completed by explaining "fee paid on Document Number _____"
2. Q. An original land contract was recorded indicating a sale price of \$50,000. Now a deed is recorded in satisfaction indicating the land contract was amended and the sale price was \$45,000. What is the transfer fee based upon?

A. Per sec. Tax 15.04(2)(a), Wis. Adm. Code, the fee is based upon the purchase price established by the terms of the land contract. If that contract selling price was amended because of a bonafide business reason, the fee would be based upon the amended price of (\$45,000).
3. Q. How is the transfer fee calculated on an assignment of vendee's interest in an original land contract?

A. The fee is based upon the amount of the full consideration paid or to be paid per s. 77.21(3)(a), Stats. Therefore, the fee is on the balance owed on the land contract plus any additional amounts paid by the new vendee.
4. Q. Are sales of a life estate subject to transfer fee?

A. Yes! However, a gift of life estate between parent and child for no consideration would be exempt per s. 77.25(8), Stats.
5. Q. Is a sale by an estate exempt from a return and fee per s. 77.25(11), Stats.?

A. No. A sale pursuant to a will does not qualify for the exemption.
6. Q. What exemption applies for a conveyance to a nonprofit organization or church?

A. There is no exemption for this kind of conveyance. See sec. Tax 15.03(5), Wis. Adm. Code. The fee would be based upon the fair market value if a gift or deed of nominal consideration or on the sale price if a sale.
7. Q. How should a return be completed when a deed is being recorded correcting a previously recorded deed between the parties?

A. Type of transfer (line 18) should be checked "other" and explain "correcting deed recorded as document number _____" and on line 26 enter exemption number 3. The rest of the return should be completed as the original return used for the deed in error.

8. Q. Are a return and fee required for cemetery lots?
- A. No, conveyances of cemetery lots, as distinct from land conveyed for use as a cemetery, are not subject to fee and return. See sec. Tax 15.05(6), Wis. Adm. Code.
9. Q. A owns a building on leased land. Is a fee due when A conveys this building?
- A. Yes. An improvement on leased land is subject to a transfer fee when conveyed.
10. Q. A lease of 99 years is sold with only 40 years remaining of the lease, are a return and fee due?
- A. Yes. The fact that 40 years are remaining does not change the status of an original 99 year lease.
11. Q. C and D, an unmarried couple, purchased a home together some time ago, but now are going to split up. D quit claims his interest to C and her parents. The property is worth \$75,000, but only nominal equity has been built up. Is there a fee? If so, on what is it based?
- A. Yes. \$37,500 ($\frac{1}{2}$ interest).
12. Q. Is there a fee due on the sale of "air rights" over land?
- A. Yes. See the definition of sec. 990.01(35), Stats., and 63 Am. Jur. 2d Property § 14 stating that land extends from the surface downward to the center of the earth and upward indefinitely to the skies. Modern courts have, of course, recognized that this must be balanced with the right of flight.
13. Q. A wishes to buy and develop a parcel of land owned by C but is unable to secure financing to begin construction. B, a venture capitalist, negotiates with A and C whereby B purchases on land contract from C and agrees to convey to A when A's financing is approved for a fee.
- How many fees are due?
- A. One fee is due. B is providing "bridge" financing for A and is acting as an agent.
14. Q. The same fact situation as in 13 above except B buys on a land contract on speculation and later sells it to A, the developer.
- How many fees?
- A. Two. B and A have no prior agreement for an agent principal relationship to arise from.

15. Q. Is there a fee due on a deed for right of way across another's parcel?
- A. No. This is an easement.
16. Q. Is there a third fee due on a three corner exchange if there are only two direct deeds?
- A. No. The IRS has ruled that direct deeds are acceptable for like kind exchange purposes.

Note: Explanation of Three Cornered Exchange

1. O wants to buy M's property
 2. M wants to trade because a cash sale would generate a tax liability due to M's low basis.
 3. O finds N who has parcel that M likes and is willing to sell for cash.
 4. Under old rule, O buys from N and then exchanges with M generating three transfers and three fees.
 5. Under new rule O buys from N but N deeds directly to M. M deeds his parcel to O. Two transfers result so only two fees are generated.
17. Q. In the relocation industry, companies usually take a deed as grantee and a blank deed. The grantor is paid and moves away. The relocation company puts the property on the market and at some later date sells it to another party and records only the deed to the new grantees. How many fees are due?
- A. One. Since the relocation company does not record the deed to itself, the Department will not assert a second fee. The transfer to the relocation company is clearly a conveyance, but the language of the second sentence of sec. 77.22(1)(a), Stats., may not reach it unless recorded. This interpretation will remain in effect indefinitely.
18. Q. Is a "right to purchase" agreement taxable?
- A. No. It is an option.
19. Q. Should the option payment be added to the purchase price if exercised later?
- A. No.
20. Q. Is a transfer from a husband and wife to that husband and wife changing the classification of the property for marital property purposes taxable?
- A. No.

21. Q. Is a transfer from the husband to the same husband and wife changing the classification of the property for marital property purposes taxable if the property is subject to a mortgage?
- A. Yes. The debt obligation takes the transfer out of the protection of sec. 77.25(8), Stats., even if it is solely for marital property classification purposes.
22. Q. Does exemption 15 (sec. 77.25(15), Stats.), apply to transfers between siblings and their corporation or partnership?
- A. No. See: 4 W's and Wagener Case.
23. Q. Does exemption 15 apply to transfers wherein the property is subject to a mortgage lien?
- A. No. The exemption language specifies for no consideration. Assumption of debt precludes application of the exemption.
24. Q. Is a transfer from the Resolution Trust Corporation taxable?
- A. No. See 12 USCA §1441a.
25. Q. Is a transfer from a defunct savings and loan to the Resolution Trust Corporation taxable?
- A. No. The Resolution Trust Corporation is acting as the receiver or agent of the defunct thrift in the same manner as the sheriff in a foreclosure sale.
26. Q. Are real estate broker commissions deductible from the basis (selling price) of the fee?
- A. No.
27. Q. Are expenses which are paid by the buyer on behalf of the seller consideration?
- A. Yes.
28. Q. Is a mutually acknowledged child a foster child for purposes of Exemption 8 (sec. 77.25(8), Stats.)?
- A. No.
29. Q. Partners A and B of Partnership AB sell their total partnership interest to Partners C and D of Partnership CD. The AB partnership owned real property, is there a fee due?
- A. Yes.

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